

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY) CA 04-01592
) Boston, MA
PATENT LITIGATION) September 9, 2004
)

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE
TELEPHONE CONFERENCE

APPEARANCES:

(As previously noted.)

JUDITH A. TWOMEY, RPR
Official Court Reporter
One Courthouse Way
Courtroom 10~Room 5200
Boston, MA 02210
(617)946-2577

1 raised this in our conference call with Mr. Gindler on
2 Tuesday and, similarly, were not told one way or the
3 other what Columbia's position was as to whether there
4 was a license in effect.

5 THE COURT: Well, that anticipated my next
6 question. These are the type of things when, you know,
7 you're conferring, to narrow or eliminate disputes, you
8 ought to be focusing on, because if Biogen has its
9 license back, if it's Columbia's position -- and it has
10 to be clarified that it's not terminated -- under that
11 Gen-Probe case that I discussed at 29 to 30 of
12 preliminary injunction decision on August 13, maybe that
13 contributes to eliminating a case in controversy too.
14 Or, conversely, and this is really a rhetorical -- this
15 is really not a rhetorical question -- if they have lost
16 their licenses, does that distinguish this from that
17 Supersack line of cases?

18 MR. GINDLER: Your Honor, it might create a
19 controversy between the parties as to whether or not
20 their license is in effect, but it would not be in a
21 controversy at all about the '275 patent because it would
22 simply be a controversy, for example, with Biogen as to
23 whether or not we had the right to terminate or, later,
24 to permit an audit. That's not a question about the '275
25 patent.

1 saying that I'm attempting to resurrect their case. I'm
2 talking about a pattern of misuse of a patent to obtain
3 financial gain that is -- was improper. And, only now,
4 after causing everyone to spend boat loads of money to
5 try to preserve these licenses, Columbia has decided to
6 change its mind about terminating licenses, evidently,
7 although we're not even sure about that. But there is
8 some pretty clear law that supports the proposition that
9 those fees that were incurred can be recovered as
10 damages, not merely as fees under these circumstances.

11 So those are the kinds of claims that we would
12 be supplementing our complaint to assert.

13 THE COURT: Well, you'd have to move for leave
14 to amend it, and then I'd have to decide if that's
15 contested and, if it's contested, whether the interests
16 of justice make it appropriate.

17 MR. WARE: Yes, I was only going to say it would
18 be -- I think there's a somewhat different standard for
19 supplementation as opposed to amending to bring to light
20 facts that occurred after the filing of the original
21 complaint. But, in any event, yes, that is certainly
22 true. The existing complaint, however, does have a count
23 in the complaint asking the court to determine that no
24 royalties would be owed on the '275 patent because that
25 patent is invalid.

1 further down the road is uncertain. I've got other
2 demands in criminal cases, among other things.

3 MR. GINDLER: Your Honor, this is David Gindler.
4 We understand the demands on the court's time. Our hope
5 is to try to have this done as quickly as possible with
6 the court's own schedule and hoping to avoid any further
7 costs in the current double patenting schedule that the
8 court has laid out. We gave the covenant as soon as
9 Columbia made the decision to go this route. It was an
10 extremely difficult decision for the university to make.
11 It was largely driven by the university's desire not to
12 litigate '275 patent while the Patent Office is
13 determining what if any patent rights Columbia is
14 entitled to have in the first place. A very hard
15 decision to make. Many people were involved. And
16 Columbia is giving up quite a lot to make this decision.

17 THE COURT: And, in fact, you got -- I assume
18 that you and your client had material new information
19 after you had my decisions in the middle of August. If I
20 had stayed this litigation --

21 MR. GINDLER: We had a lot of new information
22 based upon the hearings we had, based upon your Honor's
23 rulings on the motion to stay, based upon expert reports.
24 All of these informed our decision. But the primary
25 factor making our decision ultimately, looking back on